



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/151442

PRELIMINARY RECITALS

Pursuant to a petition filed August 17, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on September 26, 2013, at Sheboygan, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's request for a power wheelchair.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Linda Wulick
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Sheboygan County.
2. Petitioner's diagnoses include multiple sclerosis (MS) and osteoporosis. She has a stage IV sacral ulcer.

3. Petitioner is dependent on caregivers for cares including bathing, dressing, grooming, repositioning, ostomy care, cooking, housekeeping, grocery shopping.
4. Petitioner had been on bed rest for 21 months prior to August, 2013. She has not been weight bearing for approximately 3 years.
5. Petitioner currently has a manual wheelchair and a power wheelchair with tilt feature. The manual wheelchair is used for brief period for medical and other appointments.
6. On May 17, 2013, the Petitioner submitted a request for a standing wheelchair. The Petitioner wants to be able to become more independent with regard to some cares and household chores including cooking and washing.
7. On May 22, 2013, a Resource Allocation Decision was issued concluding the requested wheelchair with standing feature does not meet the Petitioner's outcomes.
8. On May 30, 2013, the Petitioner was assessed in her home by an inter-disciplinary team for the standing wheelchair.
9. On August 5, 2013, the Petitioner participated in a meeting with the Grievance and Appeals Committee. On August 8, that Committee issued a decision upholding the agency's denial of the Petitioner's request.
10. On August 17, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Family Care program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the agency denies a requested service, the client is allowed to file a local grievance. The petitioner did file a grievance which was reviewed at the departmental level per Wis. Admin. Code § DHS 10.54, and the original service denial was upheld in that review. The petitioner then appropriately sought a fair hearing for a further de novo review of the denial decision.

I conclude that the FC agency correctly denied the request for the standing power wheelchair. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; ...home modification; ... personal care services; ...durable medical equipment...and community support program services.

Wis. Admin. Code §DHS 10.41(2).

As a power wheelchair is an item of durable medical equipment which is covered under the state's plan for medical assistance, there is no dispute that a power wheelchair can be provided under FC if it is medically necessary, appropriate and cost-effective. Id., 107.24(2)(c)8. In this case, the Petitioner has a power wheelchair. The current chair has a tilt feature. The Petitioner is requesting a power wheelchair with a standing feature.

In this case, the agency determined that the requested wheelchair was not medically necessary because the current wheelchair gives the Petitioner the ability to decrease pressure on her wound and it will not result in improvement in function. The agency also concluded the requested wheelchair is not appropriate because of concerns regarding her endurance and strength to safely and consistently operate the wheelchair. When the agency had an IDT assess the Petitioner's ability to safely operate the wheelchair, the agency's witnesses testified she was unable to do so. With regard to the Petitioner's outcomes related to being able to be more independent with household chores and cares, the agency witnesses testified the Petitioner does not currently have the strength or endurance to stand and the requested wheelchair does not have adequate upper body support. Further, the Petitioner has advance osteoporosis and the agency asserts that it is not safe for her to use the stander without adequate support. The agency also noted that the Petitioner could have physical therapy services to improve her upper body strength but she has not requested such services and she has not consistently engaged in home exercises independently to improve strength and endurance. The agency also noted that she is unable to propel her manual wheelchair.

The Petitioner and her caregiver disputed the agency's testimony with regard to her ability to operate the wheelchair. She asserts that the current wheelchair with tilt feature does not get her off of her back adequately to help heal her pressure wound. The Petitioner and her caregiver conceded that she lacks trunk strength due to bed rest for 2 years but assert that the standing wheelchair will help improve her trunk strength as well as her endurance. Further, the Petitioner noted that bearing weight will help her osteoporosis.

I recognize the reasons for the Petitioner's desire to have the standing wheelchair. At some point, such a request may meet the criteria for approval. However, the evidence indicates that the Petitioner does not, at this time, have the strength and endurance to safely and consistently operate the requested wheelchair. It is not appropriate to furnish a power wheelchair to a person who cannot safely and consistently operate it. The agency has suggested that the Petitioner request physical therapy services to improve strength and endurance. If the Petitioner follows through on this suggestion and improves strength and endurance, the request may be appropriate. Further, with regard to the Petitioner's wound, the requested chair is not medically necessary as there are other appropriate means of decreasing pressure and promoting healing.

CONCLUSIONS OF LAW

The agency properly denied the Petitioner's request for a standing power wheelchair.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of November, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 15, 2013.

Community Care Inc.
Office of Family Care Expansion